No. 02-1143

Supreme Court, U.S.
FILED
MAR 13 2003
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH P. PEROT SR. ("pro se")
Petitioner,

vs.

McDONALD'S CORPORATION "et al"
Respondent(s).

ON PETITION FOR WRIT OF CERTIORARI TO

The United States Court of Appeals for the Fifth Circuit .

REPLY BRIEF OF PETITIONER JOSEPH PEROT SR.

Joseph P. Perot Sr. ("pro se")
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QUESTION(S) PRESENTED

1.) Did the Fifth Circuit Court of Appeals and the District Court ignore well established Texas Law, and Federal Law in their decisions regarding a breach of a 20 year "Ground Lease" dispute in Texas and in doing so unlawfully enforce a settlement agreement?

2.) Did the Fifth Circuit Court of Appeals and the District Court abuse its discretion and make erroneous findings by the court's dismissal of the claim for 1st, "lack of subject matter jurisdiction" then continue to hear and rule on other issues in the claim?

3.) Did the Fifth Circuit abuse its discretion and deny due process, and equal access to the judicial system by sanctioning Perot?

4.) Did the Fifth Circuit Court of Appeals and the District Court (with Judge Harmon presiding) disregard the earlier ruling and order of District Court Judge Hoyt ?

5.) Did the Fifth Circuit Court disregard its earlier rulings and findings as well as those of an arbitrator, and Federal District Judge Hughes in 1997?

6) Did the Fifth Circuit & Judge Harmon deny Perot DUE PROCESS by dismissing the case before discovery and deny my Motion to Compel.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the-
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[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Joseph P. Perot Sr.,
4908 Tamarisk Street
Bellaire, Texas 77401

Marsha Arriens Perot
4908 Tamarisk Street
Houston, Texas 77401

McDonald's Corporation,
Oak Brook, Illinois

Stewart Title Company,
1910 South Post Oak
Houston, Texas

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REPLY TO
MCDONALD'S COUNTERSTATEMENT & Argument

This Petition should be granted to resolve questions left open by the Court's earlier decisions.

McDonald's says the petition presents no claim of a conflict in rulings among the Circuit Courts of Appeal. I, Perot, and the petitioner in this cause say of course it does indeed. Conflict with this Court even. McDonald's is trying to misleading this Court. I ask you to look at the record before you make your decision you will be amazed. McDonald's and Perot had just argued the issue of whether the Ground Lease could be waived or amended in any way or any agreement in connection to the lease could be binding without the acceptance by an "authorized officer" of McDonald's and the signing by both Perot and McDonald's. see *McDonald's Corporation v. Perots, case # 70 115 0111 95 K* before the American Arbitration Assoc. dated Jan. 10, 1996. see also *McDonald's Corporation v. Perots cause # H96-1136* before federal Judge Lynn Hughes dated June 03 1996, and *McDonald's Corporation v. Perots, Appeal # 96-20653* before the Fifth circuit Court of Appeals. In each cause of action it was ruled that McDonald's and Perots must abide by the terms of the lease as written. That any waiver, amendment or any agreement in connection to the lease must be accepted by an "authorized officer" of McDonald's and must be in writing signed by both McDonald's and Perots. Consequentially the rulings by Judge Harmon and the Fifth Circuit Court are in direct conflict with their courts rulings on the same issues.

McDonald's offer of clarification is flawed.

1. The Fifth Circuit Court wrongly, whether intentional or not, by affirming Judge Harmon's ruling is in fact "enforcing a settlement agreement" whether it is the one read into the record before Judge Hoyt but not accepted by McDonald's. Remember "any agreement concerning the lease to be binding, must be approved by McDonald's "authorized officer" and must be in writing, signed by both Perots and McDonald's Corporation." *see* ***R. page 51 para. 21 & page 52 para c or see Appellant R.E. appendix G, para 21 & C see also Lease page 12 para c & page 13 para 21.*** All of these quotes are of McDonald's hand.

Or it could be the one Judge Harmon ruled Perot would not sign the "settlement agreement" McDonald's sent him. McDonald's didn't bother to tell the court it contained an indemnity clause (very big material issue) in McDonald's favor charging the Perots and their heirs with protecting McDonald's for eternity, against third parties in any suit that may arise. And Judge Harmon would not grant Perot leave to file an answer. And the Fifth Circuit would not Compel McDonald's to produce the document.

If the settlement agreement McDonald's sent Perot has material issues that are not in the settlement agreement read into the record that would be a new settlement agreement. Perot had the right not to accept the new settlement offer and did not. Perot did make changes initialed them and sent it back to McDonald's. McDonald's attorney called Perot and said sign as written or else. Perot sent McDonald's letter taking all offers off the table. *see* ***(R 182 or APP. R.E. tab D)*** McDonald's did not go back to the courts either. Judge Harmon erred in her ruling.

2. Here again McDonald's is just plain misstating the facts. The claim before Judge Hoyt claimed money was due Perot under the 1995 Arbitration Agreement and the, 1995 Amendment to the Arbitration. McDonald's claimed under the 1995 Agreements Perot was not due money until Perot got a closure report on environmental issues on the property from the TNRCC and sent it to McDonald's. Then McDonald's would immediately pay Perot. On September 24, 1997 Perot got the Closure Report and sent it to McDonald's removing all conditions precedent to Perot getting the $60,000 rent held in escrow. McDonald's still had possession of the property in 1998 and was refusing to pay the $60,000 that is now for sure due Perot. This was the issue Perot sued for on September 10, 2001. And it was within the 4 year Statute of Limitations. Again Judge Harmon erred in her ruling here. The Fifth Circuit erred in affirming her ruling.

3. Stewart is named in the settlement agreement mailed to Perot by McDonald's. The fact is McDonald's made Stewart a party back then. I thought Stewart should be named in this suit. In August 1998 Stewart and McDonald's entered into a conspiracy whereby Stewart would pay over the $60,000 escrow sums to McDonald's and the two would enter into an indemnity agreement protecting Stewart should Perot file suit. Perot did not know about this indemnity agreement until 2002.

SUMMARY

Nearly Verbatim, Slightly Pregnant both are interesting concepts but probably there is no such thing. You're just as pregnant on day one as day 200. If the 2001 suit is nearly verbatim then it is not verbatim the 1997 suit. In the 1997 McDonald's argument was before the $60,000 would become due only after Perot gave McDonald's a closure report on the property. In the 2001 suit there is not a condition precedent to Perot being entitled to the $60,000 rental for his property.

Under Texas Rules of Civil Procedure 11, a settlement agreement will be enforceable only if it is (1)in writing, (2)signed, and (3) filed as part of the record. see *Cherco Properties, Inc. v. Law, Snakard & Gambill, P.C.*, 985 S.W. 2d 262, 265 (Tex. App. 1999). Texas law further requires that to be enforceable, a settlement agreement must include all material terms-even if performance is to be completed later. *Padilla v. LaFrance*, 907 S.W. 2d 454, 460 (Tex. App. 1995). If a party rejects a settlement or other agreement before the performance of a condition precedent to the initial formation of the agreement, the settlement or other agreement may never become enforceable because at the time the condition is satisfied , there would not be an offer and acceptance. "Before an agreement becomes binding and enforceable there must be an offer and acceptance, and the offer must be accepted in strict compliance with its terms." see *Williford Energy Co. v. Submergible Cable Service Inc, 895 S.W. 2d 379, 384 (Tex. App. Amarillo 1994, no writ)*

This said if the settlement agreement read into the record, which had to be accepted by McDonald's "authorized officer) does not mirror the settlement agreement sent to Perot by McDonald's as to material terms, and it does not, therefore under Texas Law there is not an enforceable settlement agreement between Perot and McDonald's. And Perot is entitled to his day in court before a jury of his peers.

On Nov. 14, 1997 I canceled all settlement offers ***.see Record p. 182 or Appellant's RE tab D*** McDonald's still holding title to the property knew there was not a binding agreement or even an offer and McDonald's never went back to the Court.

REASONS FOR GRANTING THE PETITION

(1) Injustice was done by the final determination of the suit, and injustice was not caused by Appellant's own inexcusable neglect. (Rule 578)

(2) There is direct conflict in the opinions here and earlier opinions on the same issues in the same Federal Courts.

CONCLUSION

There is presently a binding 20 year ground Lease between Perot and McDonald's and $60,000 is due Perot. The Fifth Circuit abused its discretion and denied Perot due process and equal access to the courts by sanctioning Perot and by denying Appellant, Perot's Motion to Compel McDonald's to produce the "un-signed Settlement Agreement" which would have shown that it contains material issues not contained in the settlement before Judge Hoyt. This case was originally in Texas state court and lacking jurisdiction in Federal court it should be sent back to Texas state court. As pointed out in Perot's Petition for writ of Certiorari the Fifth Circuit and the District Court disregarded the laws of the State of Texas , and Federal rules, and even their earlier opinions in their decisions in this case. And the Lower courts decisions simply are not supported by the facts.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Joseph P. Perot Sr.
Joseph P. Perot Sr. (pro se)

Date: March 13, 2003.